IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8840 of 1991

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKANT RAICHAND & 9 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR KM PATEL for MR S TRIPATHY for Petitioners
MS REETA CHANDARANA, AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 02/09/2006

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution of India the petitioners seek the following reliefs:

"[19] Taking into consideration above submissions and such other submissions as may be advanced at the time of hearing, Your Lordships may be pleased to:

[A] withdraw the Revision Application No.21 of 1991 from the Respondent No.1 and take the same along with the present Special Civil Application for appropriate decision;

[B] issue a writ of certiorari and/or mandamus, a writ or order or direction in the nature of certiorari and/or mandamus, quashing and setting aside the order of the Respondent No.1 dated 6.12.1991;

[BB] Issue a Writ of certiorari and/or mandamus, a Writ or order of or Direction in the nature of certiorari and/or mandamus quashing and setting aside the Order of the Respondent No.1 dated 22/2/1991, being Annexure-N.

[BBB] Issue a Writ of certiorari and/or mandamus, a Writ or order of or Direction in the nature of certiorari and/or mandamus quashing and setting aside the Order of the Respondent No.2 – the Collector of Ahmedabad dated 20/8/1991, being Annexure-C.

[BBBB] Issue a Writ of Mandamus, a Writ or order of or Direction in the nature of Mandamus directing the Respondent No.2, the Collector of Ahmedabad to comply with the directions of the Secretary, Revenue Department (Appeal), as incorporated in the order of the Secretary, Revenue Department (Appeal) dated 23/1/1984, being Annexure-B.

[C] issue a writ of mandamus, a writ or order or direction in the nature of mandamus, directing the State of Gujarat (Respondent No.4) to decide the grant of the above land to the petitioners on permanent basis;

[D] Pending admission and final disposal of this Special Civil Application, restrain the Respondent No.2 and the Respondent No.3 to implement the order of the Respondent No.2 dated 20.8.1991;

[E] Pending admission and final disposal of this Special Civil Application, restrain the Respondent to implement the order of the Respondent No.1 dated 6.12.1991 and any order that may be passed on Revision Application No.21 of 1991."

2. Considering the chequered history of the case,

it would be necessary to narrate the facts in detail.

3. The dispute involved in the present petition pertains to Government waste land admeasuring Acres 3-18 gunthas and 57 sq.mts of City Survey No.7887 situated in the Ambawadi area of Sardarnagar Township, Ahmedabad (hereinafter referred to as “the subject land”). The facts of the case as culled out from the available record are that the subject land was an open plot of land in Ambawadi area of Sardarnagar Township, Ahmedabad, wherein dirty water of Ambawadi area was being accumulated. In order to make good use of such water and to avoid insanitation, pursuant to an application dated 12th April, 1958 made by one Shri Tilumal Dharamdas requesting for grant of the said land, by an order dated 31st May, 1958, lease was granted in respect of the subject lands in favour of the said Shri Tilumal Dharamdas and one Shri Lachhmandas Jagumal for a period of five years for agricultural purpose. Subsequently the lease was extended for a further period of ten years.

4. It appears that it was brought to the notice of the Department that the lessees had transferred possession of the said lands to one Shri Raichand Amulmal (predecessor of the petitioners) sometime in 1962, who started

using part of the said lands for a purpose other than agriculture. After issuing show cause notice for breach of conditions of lease, the Managing Officer & Administrator, Sardarnagar Township, Ahmedabad, by an order dated 10th July, 1967 ordered to cancel the allotment order dated 18.5.1958 whereby the subject lands has been granted on lease for agricultural purpose. The said Raichand Amulmal carried the aforesaid order of the Managing Officer in revision before the Settlement Commissioner, who by an order dated 8th April, 1964 quashed and set aside the order dated 10th July, 1967 as well as the levy of fine and non-agricultural assessment. It was held that no penalty could legally be levied on the petitioner. As regards proceedings for dispossession, it was directed that the Managing Officer shall afford the petitioner a reasonable opportunity of hearing before taking any action.

5. Thereafter by an order dated 27th November, 1972 the lease was renewed in favour of Raichand Amulmal till 31st July 1973. Upon expiry of the period of lease, the said Raichand Amulmal made an application for renewal of lease and also requested that the subject lands be granted to him on a permanent basis.

6. In the meanwhile during the pendency of the

aforesaid application, the Collector, Ahmedabad, considering the possession of the subject lands by the said Shri Raichand Amulmal after 31st July, 1973 to be unauthorized, by an order dated 23rd September, 1983, imposed annual non-agricultural rent and penalty at 100 times the assessment for non-agricultural use and further directed that the subject lands be made fit for agriculture and be vacated.

7. Being aggrieved by the aforesaid order dated 23rd September, 1983 passed by the Collector, Ahmedabad, the said Raichand Amulmal made a Revision Application before the Secretary (Appeals) who by an order dated 23rd January, 1984 set aside the order dated 23rd September, 1983 passed by the Collector and remanded the matter with a direction to decide the same in the light of the observations made in the said order.

8. Pursuant to the aforesaid order dated 23rd January, 1984, the Collector, by an order dated 20th August, 1991 decided to fix the annual rent at the rate of Rs.16298.40 per year with effect from 1.8.1968 to 31.7.1973; he also assessed the entire land admeasuring 10060 sq. yds. on non-agricultural basis at the rate of Rs.16298.40 per year with effect from 1.8.1973 till the possession of the land is handed back to the Government. It was held

that since the occupier had violated the conditions of the lease, lesser penalty could not be imposed. Hence, he decided to stick to his earlier stand of imposing penalty at 100 times the annual assessment and directed that the land be made fit for cultivation and vacant possession be handed over.

9. The petitioner carried the aforesaid order of the Collector, Ahmedabad in revision before the State Government under the provisions of section 211 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as the Code). The petitioner also filed a stay application along with the Revision Application.

10. By a communication dated 31st August, 1991, the office of the Additional Chief Secretary (Appeals) informed the petitioner that his Revision Application dated 28th August, 1991 is under consideration; that an order of status quo for a period of 8 days is being made on the stay application and the hearing is kept on 7th October, 1991.

11. Again by a communication dated 5th September, 1991 the office of the Additional Chief Secretary (Appeals) informed the petitioner that considering the submissions made by his Advocate, it is ordered that status quo be maintained till the final disposal of the Revision Application.

12. Thereafter by an exparte order dated 6th December, 1991, the interim relief granted earlier was vacated and it was directed that action be taken in accordance with the order dated 20th August, 1991 of the Collector and report be submitted within 20 days. The said order as translated into English reads thus:

> *"The Advocate for the applicant was heard on 27.11.91. Upon perusal of case papers it does not appear that he has cultivated the land. As per the decision his possession over the land cannot be continued. The advocate for the applicant had submitted that the land has been used for agricultural purpose and that non-agricultural rent could not be recovered for land which has been used for agricultural purpose. He sought for time to produce supporting evidence. He was granted time up till 16.12.1991. The circumstances for using the land for agricultural purpose have ceased since long, in these circumstances it is not proper to let the land be in his possession. The Collector, has rightly directed to return the lands within 15 days, as per the said proceeding it is not proper to continue the interim relief.*

ORDER

For the aforesaid reasons the stay granted against the action for taking back the land is vacated. Report in terms of paragraph–4 of the order of the Collector be forwarded within a period of 20 days."

13. It is the case of the petitioners as averred in paragraph 15 of the petition that, *"On 16th December, 1991, the day on which the case was adjourned, the petitioners appeared before the respondent No.1. To their surprise, the matter was not on board. On their enquiry, they were told that as the matter was heard on 27th November,1991, nothing remains to be submitted to the respondent No.1, the matter is treated as heard"*.

14. It is at this stage that the petitioners being aggrieved by the aforesaid stand of the respondent No.1, have approached this Court by way of the above numbered petition seeking withdrawal of proceedings of the Revision Application with a further prayer to decide the same in the present proceeding.

15. Though belatedly, the respondents have filed counter affidavits in response to the petition. On behalf of respondent No.1, the

State of Gujarat, Shri D.M. Mojidra, Mamlatdar, Office of the Secretary, Revenue Department, (Appeals) has filed affidavit-in-reply dated 30th August, 2006 and on behalf of respondent No.2, Collector, Ahmedabad, Shri Harshvardhan Jayantilal Vyas, Deputy Collector, A.R.D.C.-Ahmedabad has filed affidavit-in-reply dated 5th August, 2006.

16. On behalf of the petitioners, written submissions have been filed on 5th October, 2005 and further written submissions have been filed on 30th August, 2006.

17. It appears that this petition was initially listed on 19th December, 1991, whereupon this Court had passed the following order :

"Learned counsel for the petitioner assures the Court that the petitioner will pay the rents on or before 24/12/1991, as per the order of the Collector dated August 20, 1991 produced at Annexure "C" to the petition, at the rate of Rs.16,298=40 per year commencing from August 1, 1968 till the current year. On this assurance being given, it is directed that the possession of the petitioner shall not be disturbed by the respondents till December, 25, 1991. S.O. to 24/12/1991 for reporting the compliance with the aforesaid assurance."

18. Thereafter, on 24th December, 1991, the Court, after hearing the learned Advocate for the petitioners, passed the following order:-

"Learned counsel for the petitioner states that the petitioner has complied with the directions given on 19th December, 1991. He further stated that an amount of Rs.3,91,161=60 [Rupees three lacs ninety one thousand one hundred and sixty one and paise sixty] has been paid by cheque dated 21st December, 1991. He assures the Court that the cheque shall be honoured and it shall not bounce back. In view of the aforesaid assurance, the following order is passed:

"Notice was issued pending admission, returnable on January 16, 1992.

Ad-interim relief granted earlier on December 19, 1991 is ordered to continue till 17th January, 1991 on the condition that if the cheque is dishonoured for any reason whatsoever, the ad-interim relief granted herein shall automatically stand vacated"

19. On 16th January, 1992, Rule was issued and the ad-interim relief was extended from time to time. On 26th February, 1992, it was directed that the ad-interim relief shall continue till

further orders.

20. Meanwhile, in the revisional proceeding, the respondent No.1, by a communication dated 19th February, 1992, called upon the petitioner No.1 to produce evidence within a period of 7 days of the receipt of the said communication.

21. Again, by a communication dated 25th February, 1992 the petitioner No.1 was called upon to remain present on 29th February, 1992 at 15:00 hours and to produce evidence if he so desired.

22. By an order dated 25th February, 1992 the Revision Application was rejected, however, it appears that at the relevant time the petitioners were not served with a copy of the same.

23. By judgement and order dated 15th March, 2002, the present writ petition was dismissed. The Court recorded the statement made by the learned Assistant Government Pleader that the Revision Application No.21 of 1991 of which withdrawal had been sought for in the petition, has been dismissed on 25th February, 1992 and expressed the view that, in view of the aforesaid statement, the question with regard to withdrawal of the said Application and taking up the said Application along with

the present petition, does not survive.

24. The petitioners, thereafter, moved an application being Miscellaneous Civil Application No.1240 of 2004 for recalling the order dated 15th March, 2002 and seeking restoration of the main Special Civil Application. By an order dated 24th August, 2004, the application was allowed and the aforesaid order dated 15th March, 2002 was recalled and the petition was restored to file. It was also ordered that the stay granted by this Court earlier at the time of admission of the petition shall continue till the final disposal of the petition. It is in these circumstances, that the present petition has come up for final hearing before this Court.

25. In view of the fact that the proceeding which was sought to be withdrawn had culminated into the aforesaid order dated 25th February, 1992, the petitioners moved an application for amendment, seeking relief in terms of paragraph 19-BB, 19-BBB and 19-BBBB as set out hereinabove which was allowed by an order dated 24th August, 2006.

26. Heard, Mr. S. Tripathy, learned Advocate for the petitioners and Mrs. Reeta Chandarana, learned Assistant Government Pleader for the

respondent State authorities.

27. Learned Advocate, Mr. Tripathy submitted that the main issues that arise for consideration in this petition are:

- Whether the Collector, Ahmedabad could ignore the order dated 23rd January, 1984 passed by the Secretary, Revenue Department, (Appeals) whereby the order dated 23rd September, 1983 passed by the Collector, Ahmedabad, had been quashed and set aside and the matter had been remanded with directions to decide the same afresh in the light of the observations made therein, and vide fresh order dated 20th August, 1991 repeat what he had ordered vide the earlier order dated 23rd September, 1983?

- Whether the Collector was not bound to comply with the Appellate order dated 23rd January, 1984 as per settled principles of law as well as the principles of judicial discipline?

- Whether the Principal Secretary, Revenue Department, (Appeals) could dispose of the Revision Application No.21 of 1991 on 25th February, 1992 when interim injunction was operating against him from December 1991 and was still in operation on 25th February, 1992?

- Whether the Principal Secretary, Revenue Department, (Appeals) could decide to reject the Revision Application No.21 of 1991 on 25th February, 1992 when vide his Notice dated 19th February, 1992, the hearing of the matter was fixed on 29th February, 1992 and written submissions had actually been presented on behalf of the applicants during the course of hearing?

28. Learned Advocate submitted that the petitioners have been subjected to gross injustice in the proceedings before the Collector as well as the State Government. Referring to the order dated 23rd January, 1984, of the Secretary (Appeals) attention was drawn to the findings arrived at by the said authority and the observations in the light of which the matter was required to be decided in remand. It was pointed out that the Collector, Ahmedabad while passing the impugned order dated 20th August, 1991 had referred to the observations of the Revisional Authority but while making the impugned order he had totally ignored the same and passed an order in the same terms as the earlier order dated 23rd September, 1983, which had been set aside by the Revisional Authority. It was submitted that judicial discipline requires that the Collector abides by the order passed by the superior authority, but the Collector had in

flagrant disregard of the directions given by the Secretary (Appeals) while remanding the matter, passed an order contrary to the findings recorded by the said authority. Reliance was placed upon the decision of the Apex Court in the case of *Union of India v. Kamlakshi Finance Corporation Ltd*., AIR 1992 SC 711, wherein it has been held that utmost regard should be paid by adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to orders of the higher appellate authorities which are binding on them. Mr. Tripathy submitted that accordingly, the Collector, Ahmedabad was duty bound to follow the order dated 23rd January, 1984 passed by the Secretary, Revenue Department, (Appeals) and give effect to the same in letter and spirit and that non-compliance with the same amounted to violation of the principles of judicial discipline as enunciated by the Apex Court in the aforesaid decision.

29. Learned Advocate for the petitioners, further submitted that the Revisional Authority instead of appreciating the matter in a judicial manner and requiring the Collector to abide by judicial discipline and comply with the earlier order of the Revisional Authority wherein the same issues were agitated and decided, has acted in an arbitrary manner.

30. It was urged that the treatment meted out to the petitioners in the proceeding before the Revisional Authority was also highly irregular and arbitrary. It was pointed out that the Revisional Authority had vide order dated 5th September, 1991 granted interim relief till the final disposal of the Revision Application. Thereafter, the matter was heard on 27th November, 1991 and was adjourned to 16th December, 1991 for production of evidence. However, in the interregnum, vide order dated 6th December, 1991 the interim order was vacated exparte. On 16th December, 1991 when the petitioners appeared before the respondent No.1, the matter was not listed on the board. Upon inquiry the petitioners were informed that the matter has already been heard on 27th November, 1991 and nothing remains to be submitted to the respondent No.1; that the matter is treated as heard. It is at this stage that the petitioners had approached this Court for withdrawal of proceedings from the said authority for adjudication by this Court having reason to believe that they would not be able to obtain justice in the hands of the Revisional Authority.

31. It was further submitted that this Court had vide order dated 19th December, 1991 granted interim relief in favour of the petitioners which had been continued from time to time and

continues till date. However, in defiance of the aforesaid interim relief granted by this Court, the revisional authority had during the pendency of this petition, proceeded ahead with the hearing of the Revision Application and decided the same. It was submitted that, accordingly, the impugned order passed by the respondent No.1 was bad on the count of having been passed despite the interim injunction operating against him at the relevant time when the proceedings were pending before the said authority as well as when the impugned order dated 25th February, 1992 had been made.

32. It was contended that the order of the Revisional Authority dated 23rd January, 1984 had not been challenged by the State Government, hence, insofar as the respondents were concerned the same had become final. It was submitted that in the circumstances, the findings recorded by the said authority were binding on the respondents and the Collector as well as the Revisional Authority could not go behind the findings recorded in the order dated 23rd January, 1984. It was submitted that the Collector had passed the impugned order in flagrant disobedience of the said order, and, the Revisional Authority while confirming the said order had in effect and substance sat in appeal over the earlier order passed by the Revisional Authority.

33. Learned Advocate for the petitioners vehemently urged that when the Revisional Authority had vide his notice dated 25th February, 1992 asked the petitioners to appear before him on 29th February, 1992; and in fact on that day the parties were actually heard and the petitioners had presented their written arguments, it is beyond anybody's imagination as to how an officer of the rank of Principal Secretary could dismiss the Revision Application on 25th February, 1992. It was contended that the Revisional Authority had decided the Revision Application on 25th February, 1992 prior to hearing the matter on 29th February, 1992 which was ex facie illegal rendering the said order a nullity and that the petitioners should succeed on this ground alone. It was submitted that in the circumstances, the impugned orders of the Collector, Ahmedabad, as well as the Principal Secretary, Revenue Department, (Appeals) are required to be quashed and set aside and the Collector should be directed to comply with the order dated 23rd January, 1984 passed by the Revisional Authority.

34. Learned Advocate for the petitioner submitted that the petition is more against the conduct of the respondent No.2 in that he has disregarded the principles of judicial discipline as well as against the non-judicious approach of the respondent No.1. It

was pointed out that there were specific allegations of arbitrariness and malafides in the conduct of the respondents which have not been controverted nor denied and as such should amount to an admission of those facts and submissions.

35. The petition was strongly contested by the learned Assistant Government Pleader. It was submitted that the subject lands had been given on lease solely for agricultural purpose, however, the petitioners had used the same for a non-agricultural purpose by setting up a limekiln thereon, in contravention of the conditions of grant. It was submitted that though the land had been granted for cultivation thereof, the leaseholders under the pretext of having more water than required for agriculture, have started using the said land for lime kiln and accordingly four furnaces have been constructed for non-agricultural purpose without prior permission of the competent authority.

36. It was urged that the lease granted in favour of the predecessor of the petitioners had expired as early as in the year 1973, however, the petitioners still continued to hold the same without any authority of law and requested the authorities to grant the same on permanent basis. It was submitted that looking to the nature of the illegalities committed by

the petitioners, the order of the Collector is just and fair and has rightly been confirmed by the Revisional Authority. It was pointed out that before the authorities, the petitioners had failed to adduce proper evidence. That, in absence of Village Form No.7/12, the petitioners could very well have produced relevant documents like property card from the City Survey Superintendent or any other relevant documents, in place of the documents asked for, to show that they were actually carrying on agricultural activities on the subject land.

37. Referring to the counter affidavit of the respondent No.1, it was also sought to be pointed out that the whole of the subject land was being used for non-agricultural purpose and that such non-agricultural activities were being carried on since long. It was argued that the submission of the petitioners that only a particular portion of the subject-land was being used for non-agricultural purpose was doubtful in view of the panchnama made by the Administrator of Sardarnagar Township, as reflected in the order of the Collector and that therefore, the Collector was justified in directing that the petitioners be evicted from the subject land. It was submitted that the penalty imposed by the Collector being in consonance with the provisions of Rule 103 of the Land Revenue Rules, is legal and valid.

38. Referring to the order dated 23rd January, 1984 of the Secretary, Revenue Department, (Appeals), it was submitted that by the said order the Collector was only directed to consider the issue of grant of lease on permanent basis to the petitioner sympathetically and it was only if the Collector thought it proper, that he was required to propose the grant of permanent lease to the Government. That as such, whether or not to make a proposal for grant of lease on permanent basis had been left to the discretion of the Collector, hence, there was no infirmity in the order of the Collector on that count.

39. As regards the contention raised on behalf of the petitioners that the order of the Revisional Authority was vitiated on the ground that though the Revision Application was heard on 29th February, 1992 the same was decided prior thereto on 25th February, 1992, the learned Assistant Government Pleader placed reliance upon the averments made in paragraph 13 of the counter affidavit made on behalf of the respondent No.1 wherein it has been stated that *"I say and submit that in the written submissions of the petitioner on 29.2.92, the day fixed for hearing vide dated 19.2.92, though the petitioner had informed about interim relief granted by the Hon'ble*

Court but did not produce any document supporting that submissions, SSRD had issued order on 6.3.92 though by mistake, date 25.2.92 was written on the first page of the order dismissing appeal of the petitioner." It was submitted that the impugned order of the Principal Secretary, Revenue Department, (Appeals) was actually passed on 6th March 1992 after hearing the petitioners but by mistake on the first page the date transcribed was 25.2.92, therefore, the contention raised by the petitioners was misconceived and deserves to be rejected. It was submitted that both the authorities, viz. the Collector as well as the Revisional Authority has acted within the bounds of their authority and jurisdiction; that both the impugned orders were in consonance with the provisions of law and as such were just, legal and proper and did not call for any intervention on the part of this Court.

40. Upon considering the rival contentions, it appears that the principal issue that arises for determination is as to whether the impugned order dated 20th August, 1991 passed by the Collector, Ahmedabad is contrary to the directions issued by the Secretary, Revenue Department, (Appeals) vide order dated 23rd January, 1984 so as to be in breach of the principles of judicial discipline and whether the same repeats the earlier order dated 23rd

September, 1983 that was quashed and set aside by the Secretary, Revenue Department, (Appeals). For properly appreciating the controversy, it would be necessary to refer to the operative part of the order dated 23rd September, 1983 passed by the Collector, Ahmedabad, as well as the findings recorded and directions issued by the said Revisional Authority in its order dated 23rd January, 1984, in detail.

41. The operative part of the order dated 23rd September, 1983 passed by the Collector, Ahmedabad, as translated into English reads thus:

> *" 1. Shri Raichand Amul resident of Tena A-226 Kubergar, Ahmedabad having used the lands in question for non-agricultural use without permission should deposit Rs.16298-40 towards non-agricultural rent for the period of five years from 1.8.68 to 31.7.73 and the amounts towards other cess payable thereon within a period of 30 days from the date of receipt of the order. The amount paid towards agricultural rent will be set off.*
>
> *2. From 1.8.73, till possession of the disputed land is handed over to the Government, the land having been used*

for non-agricultural purpose, that is, for lime kiln, non-agricultural assessment at the rate of Rs.0-08 paise per square metre per year for the entire land admeasuring 10060-72 sq. mts as well as other cess payable thereon as per the rates amended by the State Government from time to time are ordered to be recovered.

3. The land had been granted for agricultural use by order dated 27.11.72, which has been used for non-agricultural industrial purpose, there is breach of Condition No.2 of the said order. Therefore, a penalty of 100 (one hundred) times the non-agricultural assessment is levied on the said Raichand Amulchand under Rule 103 of the Land Revenue Rules. And it is ordered that the land be made fit for cultivation and vacant possession be handed over. In case of failure to do so, it is ordered to take steps under the provisions of the Land Revenue Code and Rules."

42. The relevant findings and directions given by the Secretary (Appeals) vide order dated 23rd January, 1984, as translated into English read as follows:

"Upon expiry of lease on 31st July, 1973, the applicant had sought extension of lease for a further period of five years from 1.8.1973 and had also requested that the subject lands be given to him on permanent basis after recovering amount towards possessory rights. In respect of the said request, the last order has been passed on 23rd September 1983, during which period the applicant had continued to be in possession of the subject lands for which he cannot be held responsible. If a decision had been taken on the request of the applicant at the relevant time and despite the same he had continued his possession, only then could his possession be considered as unauthorized, and penalty etc. could be recovered from him. In this case it has not so happened, considering which lease rent at the rate of 6% or 15% of the market price as per the new norms cannot be recovered from the applicant. Till the date of the last decision it has to be considered as if the applicant's lease continues automatically at the rates fixed earlier. Whereas the applicant has set up a lime kiln over a small part of the disputed land and the remaining larger

portion is being cultivated, despite which it has been held that rent for non agricultural purpose be recovered on the basis that the entire land has been used for non-agricultural purpose, which does not appear to be reasonable. Non-agricultural assessment can be recovered only to the extent the land is actually used for a different purpose, that is for the non-agricultural purpose of limekiln. As the user of the entire land has not been changed, assessment cannot be recovered for the entire land. Besides, if agricultural land is used for an un-connected non-agricultural purpose only for the purpose of supplementing the income and the main use is for agricultural purpose, then for such non-agricultural purpose only a nominal penalty should be imposed and non-agricultural rates should be recovered only for the part which is used for non-agricultural purpose, considering which, the impugned order of the Collector whereby he has ordered to recover non agricultural assessment at the rate of 0.08 ps per sq. mt. is not wholly in consonance with the provisions of law and is therefore, liable to be quashed and set aside. Moreover, the lease has been renewed in

favour of the applicant from 1.8.68 to 31.7.73 for which period non-agricultural rent has been assessed at Rs.16298-40 also does not appear to be legal, for the reason that the lease has been continuously extended from 1958 to 31.7.73 and the annual rent continues to be recovered at the subsidized rate fixed earlier. Moreover, despite the fact that only a small part of the disputed land is being used for limekiln, the Collector has considered the same to be industrial use and levied penalty at the rate of 100 times the non-agricultural assessment under Rule 103 of the Land Revenue Rules, which in the aforesaid circumstances also does not appear to be reasonable. Besides, the applicant has continued to be in possession of the lands right from the year 1958. He has expended considerable amount after improving the lands and the dirty/polluted water of the municipality is also being used. In these circumstances ordering the applicant to vacate his possession of 25 years does not appear to be just. If there is no hindrance/objection in any other manner, then the applicant's request be considered sympathetically and land be granted on permanent basis

after recovering amount towards possessory rights, and if that is not possible, then, from the point of view of justice it appears more appropriate to consider extension of lease for a further reasonable period. Hence, for the purpose of considering the same and for recovering annual rent as determined earlier for the period from 1.8.73 onwards from the applicant as well as for recovering annual non-agricultural assessment only to the extent of the area used for limekiln, from the time the same has been used for the said purpose and for the purpose of renewal of the applicants lease for a reasonable period and if it appears necessary to send separate proposal to the State Government in respect of the applicants request for grant of land on a permanent basis and to obtain guidance and do the needful, it appears to be more proper to refer the case to the Collector, Ahmedabad.

In the aforesaid circumstances, the Revision Application is allowed and the impugned order of the Collector Ahmedabad No.H.B. Rent/Land/Lease V-No. dated 23.9.1983 is set aside. And the case is remanded to the Collector, Ahmedabad to decide the same afresh

keeping in view the aforesaid observations and after giving the applicant an opportunity of hearing."

43. From the findings noted above, the Revisional Authority appears to have in substance recorded the following findings and issued the following directions while remanding the matter to the Collector:

(i) Lease rent at the rate of 6% or 15% of the market price as per the new standards cannot be recovered from the applicant and till the date of the last decision it has to be considered as if the applicant's lease continues automatically at the rates fixed earlier. The case was therefore, remanded for recovering annual rent as determined earlier for the period from 1.8.73 onwards from the applicant.

(ii) Only a small part of the disputed land is being used for limekiln. If agricultural land is used for an un-connected non-agricultural purpose only for the purpose of supplementing the income and the main use is for agricultural purpose, then for such non-agricultural purpose only a nominal penalty should be imposed and non-agricultural rates should be recovered

only for the part which is used for non-agricultural purpose, considering which, the impugned order of the Collector whereby he has ordered to recover non agricultural assessment at the rate of 0.08 ps per sq. mt. is not wholly in consonance with the provisions of law. Matter is remanded for recovering annual non-agricultural assessment only to the extent of the area used for limekiln, from the time the same has been used for the said purpose.

(iii) The applicant has continued to be in possession of the lands right from the year 1958. He has expended considerable amount after improving the lands and the dirty/polluted water of the municipality is also being used, in these circumstances it does not appear to be just to order the applicant to vacate his possession of 25 years. The case was remanded for the purpose of renewal of the applicants lease for a reasonable period.

(iv) To consider the applicant’s request sympathetically, if there is no other hindrance/objection and grant the land on a permanent basis after recovering amount towards possessory rights and if that is not possible then to consider

extension of lease for a further reasonable period. The case was remanded for sending a separate proposal to the State Government in respect of the applicants request for grant of land on a permanent basis if found necessary, and to obtain guidance and do the needful.

44. During the pendency of the remand proceedings it appears that the original applicant Shri Raichand Amulmal had expired in 1985 and his heirs namely the petitioners herein had been heard and the proceeding culiminated into the impugned order dated 20th August, 1991 of the Collector, Ahmedabad. It would be, therefore, necessary to examine as to whether the aforesaid directions have been complied with in the light of the findings recorded by the Revisional Authority.

45. As can be seen from the impugned order dated 20th August, 1991, the Collector, Ahmedabad has noted that the Secretary (Appeals) has made the following observations:

(1) The lease is legal and valid till 31st July 1973,

(2) Lease rent cannot be recovered at the rate of 6% or 15% of the market price as per the new standards. Till the date of the

last decision the lease is deemed to continue at the rate fixed earlier.

(3) Lime kiln occupies a small portion of the land. The rest of the lands are being cultivated. The decision to recover non-agricultural assessment in respect of the entire lands is not reasonable.

(4) The applicant is in continuous possession of the subject lands since 1958. Has incurred expenditure for improving the land. In these circumstances it does not seem just to order that the lands be vacated. If there is no other hindrance, the request may be considered sympathetically and the land may be granted on permanent basis as per standard rates and if that does not appear possible, renewal of lease for a reasonable period may be considered.

46. Thereafter, the Collector after discussing the various issues held as follows:

1. As earlier after fully considering the matter it had been decided to recover Rs.16,298-40 towards the annual non-agricultural rent for non-agricultural use of the lands of City Survey No.7887 without permission for the period of five years from 1.8.68 to 31.7.73, the same is

confirmed and it is held that recovery be made accordingly. If the applicant has paid any rent towards agricultural use the same shall be required to be set off.

2. From 1.8.73 till the possession of the disputed lands is handed over to the Government the lands having been used for non-agricultural purpose that is for limekiln, it is ordered that in respect of in all 10,1060 sq.mts annual rent at the rate of Rs.16298-40 as stated in para 1 be recovered.

3. The lands had been granted on lease to the applicant for agricultural purpose. But having violated the conditions and used the lands for non-agricultural purpose the applicant is not entitled to a lesser punishment under Rule 103 of the Land Revenue Rules. The land shall have to be made cultivable and be vacated forthwith and in case of failure to do so steps will be taken under the provisions of the Bombay Land Revenue Code and the Rules.

4. It is also ordered that the applicant shall have to make the land cultivable and hand over the possession within a period of 15 days from the receipt of this order failing which action shall be taken in accordance with the provisions of law.

47. If one compares the operative part of the impugned order of the Collector with the earlier order dated 23rd September, 1983 which had been set aside by the Revisional Authority, it is apparent that the same is in identical terms as the earlier order dated 23rd September, 1983. If viewed in the light of the observations of the Secretary, Revenue Department, (Appeals) in the order dated 23rd January, 1984, it is abundantly clear that none of the directions issued by the Revisional Authority have been complied with by the Collector while making the impugned order. The Collector after recording the directions issued by the Revisional Authority has blatantly ignored the same and repeated what was held in the earlier order dated 23rd September, 1983 which had been set aside the Revisional Authority.

48. The Revisional Authority has expressly held that non-agricultural rent cannot be recovered in respect of the whole of the lands, and that the same has to be levied only in respect of that part of the land, which has actually been used for non-agricultural. However, the Collector has chosen to ignore the said findings of the Revisional Authority and imposed non-agricultural in respect of the entire lands. The Revisional Authority has also held that lease rent at the rate of 6% or

15% of the market price as per the new norms cannot be recovered from the applicant and till the date of the last decision it has to be considered as if the applicant's lease continues automatically at the rates fixed earlier. However, the said observation also has been ignored.

49. The Revisional Authority has specifically held that it would not be just and proper to order the petitioners to vacate the subject lands. However, in utter disregard of the same, the Collector has directed the petitioners to hand over vacant possession of the subject lands. The Revisional Authority has also in terms directed that the petitioners' request for grant of the subject lands on a permanent basis at the standard rates be considered sympathetically if there is no other objection and if the same is not possible to consider renewal of the lease for a reasonable period. In the circumstances the Collector was bound to consider the question regarding grant of the subject lands on a permanent basis if there is no other objection, and was accordingly required to make a proposal to the State Government in respect of the same. In case grant of land on a permanent basis was not possible the Collector was required to consider renewal of the lease for a reasonable period. In these circumstances it was not open to the Collector to hold that the petitioners

are not entitled to a lesser punishment under Rule 103 of the Land Revenue Rules and direct that the land be vacated forthwith, which in terms, is a repetition of the earlier order dated 23rd September, 1983. When the very same issue had been considered by the Revisional Authority, and the said authority had directed the Collector to consider grant of the subject lands on permanent basis and if for some reason, namely any objections/hindrance in that regard, to consider renewal of lease for a reasonable period, the aforesaid directions of the Collector amount to overruling the directions issued by the Revisional Authority. In the circumstances, the impugned order dated 20th August, 1991 passed by the Collector, Ahmedabad being in clear breach of the directions contained in the order of remand cannot be sustained and deserves to be quashed and set aside.

50. Insofar as the conduct of the proceeding before the respondent No.1 is concerned the less said the better. It appears that at every stage the rules of procedure and the principles of natural justice have been given a go bye. As can be seen from the record of the case, initially vide order dated 5th September, 1991, it was directed that the interim relief granted in favour of the petitioner shall continue till the final disposal of the application. However,

thereafter, by an exparte order dated 6th December, 1991 the interim relief was vacated and it was directed that action be taken in terms of paragraph 4 of the order dated 20th August, 1991 of the Collector, Ahmedabad and report be forwarded within 20 days. Upon perusal of the order dated 6th December, 1991 it is apparent that the matter was heard on 27th November, 1991 and was adjourned to 16th December, 1991 to enable the petitioners to produce evidence in support of their submissions. However, without any immediate cause or reason, by the order dated 6th December, 1991 the interim relief was vacated with directions to take over possession of the subject lands.

51. It is specifically averred in the petition that on 16th December, 1991 when the petitioners appeared before the respondent No.1, the matter was not listed on board and the petitioners were informed that the matter was heard on 27th November, 1991 and nothing remains to be submitted to the respondent No.1. The aforesaid averment is not denied by the respondents in the affidavit-in-reply filed on their behalf. It is in these circumstances that the petitioners were constrained to approach this Court under the belief that they would not get justice at the hands of the respondent No.1.

52. As can be seen from the record, by a communication dated 25th February, 1992 the petitioners were informed that if the petitioners desire to produce supporting evidence, they may remain present on 29th February, 1992 at 15:00 hours, failing which it shall be presumed that they do not want to produce any evidence and appropriate decision shall be taken. However, before the date fixed for production of evidence, on 25th February, 1992, itself, the impugned order was passed.

53. Before this Court, reliance was placed upon the counter affidavit filed on behalf of the respondent No.1 to submit that the impugned order was actually made on 6th March, 1992, however, on account of some typographical mistake the date was shown to be 25th February, 1992. To verify the veracity of the say of the respondents, the learned Assistant Government Pleader was directed to call for the original record of the Revision Application. Upon perusal of the record it transpires that an endorsement has been made on the said order on 4th March, 1992. Upon calling upon the respondents to explain as to how if the order was passed on 6th March, 1992 there could be an endorsement dated 4th March, 1992 on the said order, the same was sought to be explained by stating that the endorsement was made upon verification of the said order and that the order has been made prior to 4th March, 1992

but has actually been issued on 6th March, 1992. Thus it is apparent that there has been a deliberate attempt on the part of the respondents to mislead this Court and the averment in the counter affidavit made on behalf of the respondent No.1 to the effect that the order was issued on 6th March, 1992 has been made with a view to create an impression that the said order was passed on 6th March, 1992 and not on 25th February, 1992 as is borne out from the said order. Such conduct on the part of State Authorities cannot be countenanced and the same deserves to be deprecated in the strictest terms.

54. In the light of the aforesaid facts it appears that the respondent No.1 had predetermined the issue and without waiting till 29th February, 1992, the date fixed for production of evidence by the petitioners, passed the impugned order on 25th February, 1992. Upon perusal of the impugned order, it is possible to take a view that the same was passed on 25th February, 1992 as reflected in the said order as there is no mention of the written submissions furnished by the petitioners on 29th February, 1992 in the said order nor do the same appear to have been considered by the respondent No.1 while making the said order. In fact though the proceedings have been recorded in detail in the said order, there is not even a mention of the communication dated

25th February, 1992 in the said order. The last date that finds reference in the said order is 16th December, 1991 in respect of which it is stated that “on 27th November it has been made clear that the applicants are required to submit details by 16th December. The case was not to be listed on the board. The applicants could easily have given the details to the Mamlatdar.” Therefore, it appears that the said order was in fact made on 25th February, 1992 as reflected therein.

55. Upon perusal of the impugned order dated 25th February, 1992, it is apparent that the authority has proceeded on the basis that the land is so situated that it is not possible to carry on agricultural operations therein. The authority has come to the conclusion that the petitioners have not been able to discharge the burden of proving that the said lands are being used for agricultural purpose. Upon perusal of the record of the case and the various panchnamas therein, there is no documentary evidence on record to show that the whole of the lands are being used for non-agricultural purposes. Moreover, the principal contention of the petitioners that the Collector, Ahmedabad had not abided by the directions issued by the Revisional Authority in the order dated 23rd January, 1984 whereby the matter was remanded to the Collector has been completely side stepped. No reasons are

given to state one way or the other as to whether the same has been complied with. The Revisional Authority has passed the impugned order on mere surmises and confirmed the impugned order of the Collector, Ahmedabad.

56. The Supreme Court in the case of *Union of India v. Kamlakshi Finance Corporation Ltd*. (supra) has held as follows:

"The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35-E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Direct Taxes comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in

his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35-E (1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

57. In the case of *Kausalya Devi Bogra v. Land Acquisition Officer* (1984) 2 SCC 325, the Apex Court has held that judicial discipline

requires and decorum known to law warrants that appellate directions should be taken as binding and followed. Moreover, in view of Article 141 all Courts in India are bound by the decisions of the Supreme Court. If the Supreme Court in exercise of its appellate power under Article 133 sets aside the judgment of the High Court and remands the matter to it, that judgement of the High Court for all intents and purposes would become non-existent. Even if the High Court after the remand still remains convinced by its earlier decision, it is open to it to require the parties to move the Supreme Court for modification of direction or to make a reference to the Registry of the Supreme Court for taking suo motu action. If additional evidence is not forthcoming, to apply its mind afresh to the materials already on record and dispose of the case by an independent judgement and not by restoring to life a judgement which had, in exercise of appellate powers of the Supreme Court, been rendered lifeless. It was held that in the said case the High Court exceeded its jurisdiction in doing so.

58. Applying the aforesaid principles to the facts of the present case, it is apparent that the Collector, Ahmedabad has exceeded his jurisdiction while passing the impugned order dated 20th August, 1991 whereby in effect and

substance he has resurrected the earlier order dated 23rd September, 1983 which had been set aside by the Revisional Authority. If the respondent authorities were of the view that there was any infirmity in the order dated 23rd January, 1984, they could have as well challenged the same before the appropriate forum. But having accepted the same, it is not open to the respondent authorities to disregard the findings and directions issued vide the said order. The respondents are bound to abide by the said decision and comply with the directions given there under in true letter and spirit. Both the Collector as well as the respondent No.1 have miserably failed in doing so. In the circumstances, the impugned orders dated 20th August, 1991 passed by the Collector, Ahmedabad and 25th February, 1992 passed by the respondent No.1 cannot be sustained.

59. As regards the issue as to whether the Principal Secretary, Revenue Department (Appeals) could dispose of the Revision Application No.21 of 1991 on 25th February, 1992 when interim injunction was operating against him from December 1991 and was still in operation on 25th February, 1992. As can be seen from the record of the writ petition, this Court had, by an order dated 19th December, 1991, by way of interim relief, directed that the possession of the petitioner

shall not be disturbed by the respondents. The said interim relief has been extended from time to time and by an order dated 26th February, 1992, it has been continued till further orders. Therefore, in absence of any interim injunction against the revisional authority restraining him from proceeding further with the Revision Application, the said issue does not arise at all. However, considering the nature of allegations made in the petition, the revisional authority does not appear to be justified in proceeding with the Revision Application with such undue haste and moreso, in the manner in which the said proceedings have been conducted.

60. In the result, the petition succeeds and is hereby allowed. The impugned orders dated 20th August, 1991 passed by the Collector, Ahmedabad and 25th February, 1992 passed by the Principal Secretary, Revenue Department, (Appeals), in Revision Application No.21 of 1991 are hereby quashed and set aside. The matter is remanded to the Collector, Ahmedabad who shall decide the same afresh in the light of the observations made in the order dated 23rd January, 1984 passed by the Secretary, Revenue Department, (Appeals), within a period of three months from the date of receipt of copy of this order. Rule is made absolute accordingly, with no order as to costs.

61. Considering the fact that the petitioners have succeeded in the writ petition, the sum of Rs.3,91,161=60 paid by them in December, 1991 pursuant to the order dated 19th December, 1991, is required to be refunded to them. However, in the peculiar facts of the case, it is directed that part of the said amount shall be adjusted towards the liability as may be determined by the Collector in the remand proceeding and the balance amount shall be adjusted towards the amount payable in case the subject lands are granted to the petitioners on a permanent basis; otherwise the same shall be refunded to the petitioners, with interest at the rate of 6% per annum from the date of payment thereof.

[HARSHA DEVANI, J.]

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